

was received in favor of the proposed rule change.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description

NSCC's rule change enables NSCC to offer same-day funds money settlement capabilities as part of its Fund/Serv service for certain mutual fund products. Currently, NSCC's Fund/Serv service processes mutual fund transactions in which money settlement with many settling members occurs in next-day funds.<sup>4</sup>

Money settlement for money market and no-load mutual fund transactions outside NSCC's facilities typically occurs in same-day funds. Accordingly, NSCC is proposing to make and receive same-day funds payments in connection with the settlement of money market and no-load mutual fund transactions.

NSCC will not net a member's same-day funds debit or credit with the member's next-day funds debit or credit. Accordingly, NSCC Rule 12 is being modified to clarify that there will be more than one mutual funds settling trades summary which will reflect amounts payable to or payable by NSCC for the settlement of Mutual Fund Services transactions. NSCC will produce a mutual funds settling trades summary that will evidence the member's same-day funds mutual funds settlement obligation and a separate mutual funds settling trades summary that will evidence the member's mutual funds obligation settling in next-day funds. Technical changes also are being made to Sections B and C of NSCC's Rule 52 to conform the language regarding money settlement and the cross-references to NSCC's settlement rule.

Generally, NSCC intends to credit Fund/Serv members' accounts with mutual fund transaction credits settling in same-day funds only after it has received same-day funds payments from members in a debit position.<sup>5</sup> However, to maintain flexibility NSCC will have the ability to credit members' accounts in same-day funds before receiving

same-day funds payments from members unless NSCC has concerns regarding the financial stability of the members and if the aggregate of same day funds payments for which NSCC has not received payment but is crediting members' accounts does not exceed \$100 million per day.<sup>6</sup> To protect against any possible losses incurred by NSCC if a member in a debit balance fails to pay NSCC, NSCC has the ability on the day following settlement date to reverse the credits paid to members.

### II. Comments

The Commission received one comment regarding the filing.<sup>7</sup> The commenter strongly supported and recommended adoption of the proposed rule change. The commenter based its support on the efficiency, economy, and standardization of services produced by fund/Serv. The commenter noted the importance of same day funds settlement in the three business day settlement cycle that will be implemented on June 7, 1995,<sup>8</sup> and noted the ease in which this transition will take place with same day funds settlement available for some mutual funds.

### III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).<sup>9</sup> Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. NSCC's proposed rule change to add same-day funds settlement capabilities to NSCC's Fund/Serv should help

achieve the prompt and accurate clearance and settlement of mutual fund transactions by making money market and no-load funds eligible for settlement through Fund/Serv. Moreover, the proposal will centralize the settlement of these types of mutual funds in a registered clearing agency and will allow mutual fund processors and brokers to take advantage of the efficiencies inherent in Fund/Serv.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with Section 17A(b)(3)(F) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-94-19) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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[Release No. 34-35704; File No. SR-NYSE-95-18]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Extension of Rule 103A (Specialist Stock Reallocation)

May 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend the effectiveness of Rule 103A until September 10, 1996.

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> Letter from Kevin Farragher, Director of Operations, Distribution & Service, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission (January 5, 1995).

<sup>4</sup> NSCC presently receives same-day funds payments from fund members and mutual fund processors for dividend amounts owed and processed through NSCC's Networking service and for commission amounts owed and processed through NSCC's Commission Settlement service.

<sup>5</sup> Members in a debit position with NSCC will be required to make payment to NSCC by 3:00 p.m. on the day of settlement while those members in a credit position will receive payment from NSCC beginning at 5:00 p.m. on the day of settlement.

<sup>6</sup> Letter from Robert A. Schultz, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (May 5, 1995).

If needed to fund same-day fund payments to members, NSCC has a liquidity resource comprised of a \$300 million line of credit. This liquidity resource is not exclusively dedicated to Fund/Serv settlement but also is available to NSCC to protect against losses in all of NSCC's systems and services.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement timeframe for most broker-dealer transactions. The rule becomes effective June 7, 1995. Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6-1); 34952 (November 9, 1994), 59 FR 59137 (release changing the effective date of the three day settlement cycle). Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6-1); 34952 (November 9, 1994), 59 FR 59137 (release changing the effective date of the three day settlement cycle).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

The Exchange requests the Commission to find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

## **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **1. Purpose**

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grant authority to the Exchange's Market Performance Committee to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance Committee is authorized to conduct a formal Performance Improvement Action in appropriate cases.

On May 6, 1994 the SEC extended the effectiveness of the rule until May 9, 1995.<sup>3</sup> In its approval order, the Commission stated its belief that the Exchange should develop objective performance standards to measure specialist performance.<sup>4</sup> In this regard, the Exchange has developed two objective measures of specialist performance. The first objective

measure of performance pertains to specialist capital utilization. Adopted in December 1993 on a pilot basis, the capital utilization measure of specialist performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.<sup>5</sup> The pilot has been extended until June 30, 1995.<sup>6</sup> The Exchange's Allocation Committee is being provided with specialist capital utilization information for its use in allocation decisions. The second objective measure of performance, which was recently developed, pertains to "near neighbors." On February 27, 1995, the Exchange filed, on a fifteen month pilot basis, for Commission approval of this new measure.<sup>7</sup> The "near neighbors" measure compares certain performance measures of a given stock (price continuity, depth, quotation spread and capital utilization) to those of its "near neighbors," i.e., stocks that have certain similar characteristics. The Exchange would provide "near neighbor" information to the Allocation Committee for its use in allocating newly-listed stocks.<sup>8</sup>

Regarding the Intermarket Trading System ("ITS"), the Commission has stated its belief that the mature status of the ITS as a market structure facility warrants the incorporation of ITS turnaround and "trade-through" concern into the NYSE's Rule 103A performance standards. The Exchange continues to believe that ITS matters are more appropriately addressed by means of the Exchange's regulatory process rather than through its performance measurement system, but will continue to study the matter.

#### **2. Statutory Basis**

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed extension of Rule 103A is consistent with these objectives in that it will allow the Exchange to continue to

administer the rule on an uninterrupted basis, fostering quality specialist performance.

### **B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others**

The Exchange has neither solicited nor received written comments on the proposed rule change.

## **III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-95-18 and should be submitted by June 6, 1995.

## **IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission has reviewed carefully the NYSE's proposed rule change and believes that, for the reasons set forth below, the proposal is consistent with the requirements of Sections 6 and 11 of the Act<sup>9</sup> and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable

<sup>3</sup> See Securities Exchange Act Release No. 34022 (May 6, 1994), 59 FR 25143 (May 13, 1994).

<sup>4</sup> See *id.* The Commission notes that the Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Specialist performance also is measured by the Exchange's Specialist Performance Evaluation Questionnaire.

<sup>5</sup> See Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993). The Commission notes that the capital utilization measure currently is not included in the Exchange's Rule 103A program.

<sup>6</sup> See Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995).

<sup>7</sup> See Securities Exchange Act Release No. 35661 (May 2, 1995) (File No. SR-NYSE-95-05).

<sup>8</sup> The near neighbor measure would provide the Allocation Committee with performance data. The Exchange has not proposed to include the measure in the Rule 103A program.

<sup>9</sup> 15 U.S.C. 78f and 78k (1988).

principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest.<sup>10</sup> Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act,<sup>11</sup> and Rule 11b-1 thereunder,<sup>12</sup> which allow securities exchanges to promulgate rules relating to specialists consistent with the maintenance of fair and orderly markets.

Specifically, because specialist units play a crucial role in providing stability, liquidity, and continuity to the trading of stocks on the Exchange, the Commission believes that effective oversight, including periodic evaluation of the specialists' performance, is important to the maintenance of a fair and efficient marketplace. The Commission believes that the NYSE's Rule 103A performance evaluation process is critical to this oversight in that it provides the Exchange with the means to identify and correct poor specialist performance and to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, as required pursuant to Exchange rules and the Act, and the rules thereunder.<sup>13</sup> Moreover, the possibility of a performance improvement action as a result of the evaluation process, in addition to the use of the evaluation results in stock allocation decisions, should help motivate and provide incentives for specialists to maintain and improve their market making performance for the benefit of investors.

In previous orders extending the Rule 103A pilot,<sup>14</sup> the Commission emphasized its desire for the Exchange to develop objective measures of market making performance and incorporate such measures into the Rule 103A pilot.<sup>15</sup> In addition, the Commission previously stated that it believes the mature status of the Intermarket Trading System ("ITS"), as a market structure facility, warrants the incorporation of ITS turnaround and trade-through

concerns into the NYSE's Rule 1903A performance standards. As discussed fully in the previous extension order,<sup>16</sup> the Commission believes that objective measures of specialist performance with regard to these concerns should be incorporated into the evaluation process.

Even though the proposal lacks objective market making performance standards, the Commission has determined to approve the proposal to extend the effectiveness of Rule 103A for an additional sixteen months in light of the substantial time and resources the Exchange has dedicated to the development of the capital utilization and near neighbor measures. The Commission notes that the NYSE has not proposed to incorporate these objective measures into their specialist evaluation program at this time.<sup>17</sup> The Commission believes that it is reasonable to extend the pilot to give the Exchange time to gain experience with these measures before incorporating them into the Rule 103A evaluation criteria.<sup>18</sup>

The Commission continues to believe that the Exchange should include objective performance standards that would measure accurately the traditional indicia of specialist performance, namely market depth, price continuity and dealer participation and stabilization in the Rule 103A program. The Commission encourages the NYSE to incorporate objective standards, including those relating to ITS and market making performance, into the program prior to or simultaneous with future proposals to extend the effectiveness of Rule 103A or adopt the Rule on a permanent basis.<sup>19</sup>

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer, on an uninterrupted

basis, its Rule 103A evaluation process. During the extension of the Rule, the Commission expects the NYSE to continue its examination of the efficacy of its current specialist evaluation procedures.<sup>20</sup> In addition, a substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.<sup>21</sup> Further, interested persons were invited to comment on the most recent of such proposals being the extension of Rule 103A until May 9, 1995.<sup>22</sup> The Commission received no comments on these proposals. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change is hereby approved on an accelerated basis until September 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>24</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Foreign Currency Options**

May 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1995,

<sup>20</sup> The Commission requests that the Exchange submit to the Division by July 1, 1996, a status report on the implementation of Rule 103A. The report should contain data, for each quarter of 1995 and the first quarter of 1996, on (1) the number of specialists that fell below acceptance levels of performance for each category; (2) the number of performance improvement actions commenced; (3) the number of units subjected to informal counseling to improve performance; and (4) a list of stocks reallocated due to substandard performance under the Rule and the particular unit involved.

<sup>21</sup> See Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (September 23, 1987); and 25681 (May 9, 1988), 53 FR 17287 (May 16, 1987).

<sup>22</sup> See *supra* note 3.

<sup>23</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>24</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>10</sup> 15 U.S.C. 78f(5) (1988).

<sup>11</sup> 15 U.S.C. 78k(b) (1988).

<sup>12</sup> 17 CFR 240.11b-1 (1994).

<sup>13</sup> See generally NYSE Rule 104 (Dealing By Specialists); and Commission Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1994).

<sup>14</sup> See Securities Exchange Act Release Nos. 34022 (May 6, 1994), 59 FR 25143 (May 13, 1994); 32285 (May 10, 1993), 58 FR 28905 (May 17, 1993); 29180 (May 8, 1991), 56 FR 22489 (May 15m, 1991); and 28215 (July 17, 1990), 55 FR 30060 (July 24, 1990).

<sup>15</sup> See *supra*. Although the Exchange has developed the capital utilization and near neighbor measures of market making performance for use by the Allocation Committee, it has not yet proposed to include these objective measures in its Rule 103A program.

<sup>16</sup> See Securities Exchange Act Release No. 34022, *supra* note 3.

<sup>17</sup> See *supra* notes 5, 8 and 15.

<sup>18</sup> As of July 1996, the NYSE should have two years experience with the capital utilization measure and a full year's experience with the near neighbor measure of specialist performance.

<sup>19</sup> Assuming that the experience with the capital utilization and near neighbor measure is good, the NYSE should incorporate these measures in the Rule 103A evaluation prior to the Exchange's next request for an extension or permanent approval of the Rule. In this regard, the Commission expects the NYSE to submit to the Division of Market Regulation, by July 1, 1996, a proposed rule change pursuant to Rule 19b-4 under the Act, 17 CFR 240.19b-4, to extend the Rule 103A pilot.